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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/741,208	12/19/2000	David P. Henzerling	42390P10397	7691

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EXAMINER

HESS, DANIEL A

ART UNIT	PAPER NUMBER
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2876

DATE MAILED: 10/03/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/741,208

Applicant(s)

HENZERLING, DAVID P.

Examiner

Daniel A Hess

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 September 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Receipt is acknowledged of amendment received 9/16/2002.

Specification

1. As stated in the previous action, the abstract of the disclosure is objected to because it is too short and lacks detail. Correction is required. See MPEP § 608.01(b).

Where applicable, the abstract should include the following:

- (1) if a machine or apparatus, its organization and operation;
- (2) if an article, its method of making;
- (3) if a chemical compound, its identity and use;
- (4) if a mixture, its ingredients;
- (5) if a process, the steps.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in-

- (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or
- (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

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3. Claims 1-5, 8, 11, 13 and 14 rejected under 35 U.S.C. 102(e) as being anticipated by Razavi et al. (US 6,253,122).

Razavi shows a system of wirelessly requesting, receiving, and playing digital music files into a car from a network having all of the elements and means as recited in method claims 1-5 and 8 and apparatus claims 11, 13 and 14. For example Razavi teaches the following:

Re claim 1: A user requests music files to be received wirelessly into a car (column 15, lines 1-20). Note the word 'request' is used explicitly (column 15, lines 7; 12; 13).

Re claims 2, 3 and 13: There is (column 6, lines 18-20) non-volatile memory/flash memory. The word 'download' (column 15, lines 10-11) implies local storage.

Re claims 4 and 5: Razavi shows (column 11, lines 60-67) a set-up in which an internal car network (column 1, lines 5-10) is connected to an ISP. The user may, using this system, request MP3s from the ISP (column 15, line 14). For the ISP to serve these files, it must have them stored on a database of some form.

Re claim 8: The system of claim 4 incorporated claim 8. An Internet Service Provider amounts to a computer running certain software.

Re claim 11: Wireless downloading of music files (column 15, lines 1-20) implies a wireless receiver and means to store the file.

Re claim 14: It is inherent. The purpose of Razavi's embodiment is to bring music to a car, which is meaningless unless it is played.

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4. Claims 6, 7 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Razavi in view of Fanning et al. (US 6,366,907), hereinafter referred to as Napster. The teachings of Razavi have been discussed above.

Re claims 6 and 7: Razavi shows music files being retrieved from a server into cars.

Razavi fails to show (re claim 6) receiving a requested music file from another automobile or (re claim 7) transmitting a music file from an automobile.

Napster shows (column 4, lines 20-25) peer-to-peer action in which a first computer ('provider') serves files to another computer ('client') with the aid of a server.

In view of Napster, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the old and well-known peer-to-peer type transmission of music files from one automobile to another as taught by Napster in the teachings of Razavi because peer-to-peer action mitigates the problem of bandwidth bottlenecks associated with servers serving large music files.

Re claim 15: Razavi shows music files being retrieved from a server wirelessly, but fails to show peer-to-peer action.

Napster shows (column 4, lines 20-25) peer-to-peer action in which a first computer ('provider') serves files to another computer ('client') with the aid of a server.

In view of Napster, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the old and well-known peer-to-peer type transmission of music files from one automobile to another as taught by Napster in the teachings of Razavi because peer-to-peer action mitigates the problem of bandwidth bottlenecks associated with servers serving large music files.

5. Claims 9 and 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Razavi in view of Tosaya (US 6,323,893). The teachings of Razavi have been discussed above.

Razavi fails to teach the use of the Bluetooth protocol for the wireless aspect of communications.

Tosaya (column 5, line 56) uses Bluetooth as a wireless communications protocol.

In view of Tosaya, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the old and well-known Bluetooth protocol to exchange data wirelessly as taught by Tosaya in to the teachings of Razavi because Bluetooth is a standard with hardware and software support in industry and using it allows standard parts to be employed.

6. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Razavi in view of Segal et al. (US 6,167,251). The teachings of Razavi have been discussed above.

Razavi fails to show receiving of the music file through cellular means.

Segal shows (column 30, lines 15-25) receiving of MP3 files onto a cell phone.

In view of Segal's teachings, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the old and well-known receiving of music files onto a cell phone as taught by Segal in the teachings of Razavi because a cell phone user may want to spontaneously listen to some song through their phone, without having to download through a wired connection.

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7. Claims 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Razavi in view of Britt, Jr. et al. (US 6,230,319).

Re claim 16: As discussed re claim 1 above, Razavi discloses wirelessly requesting audio the file may be a music file in that is received into flash memory. Flash memory is a form of non-volatile memory.

Drakoulis fails to show receiving a fail in two distinct communications.

Britt shows (column 3, lines 1-10) a system of resumable downloads whereby communication is broken during file download and then resumed.

In view of Britt's teachings, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the old and well-known two-communication download as taught by Britt in the teachings of Drakoulis because a system of resuming broken downloads avoids user frustration and saves time and bandwidth.

Re claim 17: Drakoulis has (column 4, line 12) a replay device which plays the music file.

The user may, using this system, request MP3s from the ISP (column 15, line 14). For the ISP to serve these files, it must have them stored on a database of some form.

Re claim 18: The term 'database' is very broad and can cover any compilation of data. As noted, the user may, using this system, request MP3s from the ISP (column 15, line 14). For the ISP to serve these files, it must have them stored on a database of some form.

Re claim 19: The collection of files at the ISP (i.e. on the ISP's servers) must be loaded onto the server from somewhere i.e. 'a computer' separate from the server. It simply isn't practical to create all the digital music files locally. If this were true, the wireless serving

computer would also have to be the recording studio where all files are originally created. In reality musical recording studios are dispersed throughout the country. Also the server must be coupled to the wireless communications network in order to do it's above-stated role (Razavi, column 15, lines 1-20).

8. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Razavi as modified by Britt, Jr. as applied to claim 16 above, in further view of Fanning. The teachings of Razavi as modified by Britt have been discussed above.

Razavi as modified by Britt fails to show peer-to-peer action.

Napster shows (column 4, lines 20-25) peer-to-peer action in which a first computer ('provider') serves files to another computer ('client') with the aid of a server.

In view of Napster, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the old and well-known peer-to-peer type transmission of music files from one automobile to another as taught by Napster in the teachings of Razavi as modified by Britt because peer-to-peer action mitigates the problem of bandwidth bottlenecks associated with servers serving large music files.


Response to Arguments

9. Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

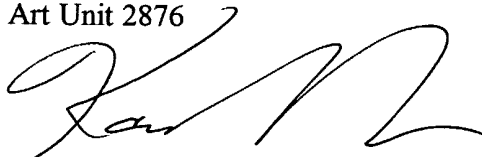
10. The examiner realizes he was in error in that while Drakoulis shows music files that are wireless received, those files are not requested, but are rather broadcast.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Examiner wishes to point out that a computer user running Napster or an equivalent file-sharing on a laptop in their car and downloading and playing music files on that laptop using a wireless network via a cell phone has met the bounds of the very broad claims as well. Also, Razavi has two more relevant patents, recently received: 6,362,730 and 6,370,449.
12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel A Hess whose telephone number is (703) 305-3841. The examiner can normally be reached on 8:00 AM - 5:00 PM M-F.
13. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G Lee can be reached on (703) 305-3503. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7722 for regular communications and (703) 308-7722 for After Final communications.
14. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.


DH
September 30, 2002

Daniel A Hess
Examiner
Art Unit 2876


KARL D. FRECH
PRIMARY EXAMINER